



STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

OFFICE OF THE GOVERNOR
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April 1, 2005

The Honorable Ken Bennett
Senate President
Arizona State Senate
1700 West Washington
Phoenix, Arizona 85007

Re: Senate Bill 1118: voter registration; provisional ballot; address

Dear President Bennett:

Today I vetoed Senate Bill 1118, related to voter registration and provisional ballots. While I recognize and support the need to promptly enact legislation to properly implement the voting-related provisions of Proposition 200, Senate Bill 1118 conflicts with federal law and could result in properly registered Arizona citizens being denied the right to vote.

The federal Help America Vote Act ("HAVA") allows any person to cast a "provisional ballot," regardless of whether they have identification with them, simply by signing an affirmation that the person is registered to vote in the jurisdiction and is eligible to vote in that election. 42 U.S.C. § 15482(a); *see also* 42 U.S.C. § 15482(b)(2)(E) (requiring election officials to post general information on voting rights laws, including specifically the right to cast a provisional ballot). Under HAVA, the provisional ballot and the voter's signature are checked against the voter registration rolls to ensure that the voter is in fact properly registered and is eligible to vote. If the signature matches and the person is eligible to vote in the election, the provisional ballot is counted; otherwise it is not.

The purpose of HAVA is to help lawful American voters to have their votes counted and to ensure that no lawful voter's vote is rejected due to a technicality. Senate Bill 1118, however, would forbid *any* person from getting a provisional ballot -- regardless of whether they are properly registered -- simply because they do not have identification with them at the time they arrive at the poll. Unlike Proposition 200, which forbids only the furnishing of "ballots" to persons without valid identification, Senate Bill 1118 would preclude such persons from getting even a "provisional ballot." This overly-broad prohibition could lead to unjust -- and unintended -- results. For example, persons who have difficulty getting to the polls -- such as some seniors, or those who have to travel a significant distance (including many rural Arizonans, and members of certain Indian Tribes) -- could be discouraged or prohibited from voting if they forget to bring their identification and are unable to retrieve it before the polls close. Similarly, a person who is

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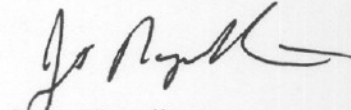
victimized by crime on or shortly before election day may not be able to get suitable replacement identification before the polls close.

Courts have held that if a person is denied a provisional ballot under HAVA, they have a right to bring a lawsuit under 42 U.S.C. § 1983. Thus, in addition to conflicting with relevant federal law, Senate Bill 1118 could lead to costly and disruptive litigation against the state -- for which the state could be liable to pay the plaintiffs' attorneys' fees pursuant to 42 U.S.C. § 1988.

While I wholeheartedly agree that non-citizens should not be allowed to vote, efforts to ensure that they do not do so must conform with federal law. And, nothing should be done that leads to the denial of the right to vote by legal Arizona citizens.

I look forward to working cooperatively with the legislature to promptly pass a law that implements Proposition 200 in a manner that is consistent with federal law and that allows all legal Arizona citizens to receive at least a provisional ballot.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Janet Napolitano", with a stylized flourish at the end.

Janet Napolitano
Governor

JN:TN/jm

cc: The Honorable Jim Weiers
The Honorable John Huppenthal

Passed the House March 24, 20 05

by the following vote: 36 Ayes,

23 Nays, 1 Not Voting

[Signature]
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate March 3, 20 05

by the following vote: 157 Ayes,

12 Nays, 1 Not Voting
Without Emergency Sec 3 failed to
Kelli Bennett obtain 3/4 vote
required by
Art IV, part 1,
Section 6,
AZ
Const

Chairman B. Dignato
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

28th day of March, 2005

at 3:56 o'clock P. M.

Jennifer Ibarra
Secretary to the Governor

Approved this _____ day of

_____, 20____,

at VETO o'clock _____ M.

Governor of Arizona

S.B. 1118

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 1 day of April, 2005,

at 4:49 o'clock P. M.

Jamie K. Brewer
Secretary of State